

**Proposed Substitute
Bill No. 831**

LCO No. 5664

**AN ACT ELIMINATING THE MUNICIPAL EXEMPTION FROM THE
CONTRACT COMPLIANCE REQUIREMENTS IN STATE CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4a-60g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,
4 the following terms have the following meanings:

5 (1) "Small contractor" means any contractor, subcontractor,
6 manufacturer, service company or nonprofit corporation (A) that
7 maintains its principal place of business in the state, (B) that had gross
8 revenues not exceeding fifteen million dollars in the most recently
9 completed fiscal year prior to such application, and (C) that is
10 independent. "Small contractor" does not include any person who is
11 affiliated with another person if both persons considered together have
12 a gross revenue exceeding fifteen million dollars.

13 (2) "Independent" means the viability of the enterprise of the small
14 contractor does not depend upon another person, as determined by an
15 analysis of the small contractor's relationship with any other person in
16 regards to the provision of personnel, facilities, equipment, other
17 resources and financial support, including bonding.

18 (3) "State agency" means each state board, commission, department,
19 office, institution, council or other agency with the power to contract
20 for goods or services itself or through its head.

21 (4) "Minority business enterprise" means any small contractor (A)
22 fifty-one per cent or more of the capital stock, if any, or assets of which
23 are owned by a person or persons who (i) exercise operational
24 authority over the daily affairs of the enterprise, (ii) have the power to
25 direct the management and policies and receive the beneficial interest
26 of the enterprise, (iii) possess managerial and technical competence
27 and experience directly related to the principal business activities of
28 the enterprise, and (iv) are members of a minority, as such term is
29 defined in subsection (a) of section 32-9n, or are individuals with a
30 disability, or (B) which is a nonprofit corporation in which fifty-one
31 per cent or more of the persons who (i) exercise operational authority
32 over the enterprise, (ii) possess managerial and technical competence
33 and experience directly related to the principal business activities of
34 the enterprise, (iii) have the power to direct the management and
35 policies of the enterprise, and (iv) are members of a minority, as
36 defined in this subsection, or are individuals with a disability.

37 (5) "Affiliated" means the relationship in which a person directly, or
38 indirectly through one or more intermediaries, controls, is controlled
39 by or is under common control with another person.

40 (6) "Control" means the power to direct or cause the direction of the
41 management and policies of any person, whether through the
42 ownership of voting securities, by contract or through any other direct
43 or indirect means. Control shall be presumed to exist if any person,
44 directly or indirectly, owns, controls, holds with the power to vote, or
45 holds proxies representing, twenty per cent or more of any voting
46 securities of another person.

47 (7) "Person" means any individual, corporation, limited liability
48 company, partnership, association, joint stock company, business trust,
49 unincorporated organization or other entity.

50 (8) "Individual with a disability" means an individual (A) having a
51 physical or mental impairment that substantially limits one or more of
52 the major life activities of the individual, which mental impairment
53 may include, but is not limited to, having one or more mental
54 disorders, as defined in the most recent edition of the American
55 Psychiatric Association's "Diagnostic and Statistical Manual of Mental
56 Disorders", or (B) having a record of such an impairment.

57 (9) "Nonprofit corporation" means a nonprofit corporation
58 incorporated pursuant to chapter 602 or any predecessor statutes
59 thereto.

60 (b) It is found and determined that there is a serious need to help
61 small contractors, minority business enterprises, nonprofit
62 organizations and individuals with disabilities to be considered for
63 and awarded state contracts and municipal contracts that are financed
64 in whole or in part by the state for the construction, reconstruction or
65 rehabilitation of public buildings, the construction and maintenance of
66 highways and the purchase of goods and services. Accordingly, the
67 necessity, in the public interest and for the public benefit and good, of
68 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and
69 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative
70 determination. Notwithstanding any provisions of the general statutes
71 to the contrary, and except as set forth herein, the head of each state
72 agency and each political subdivision of the state, [other than a
73 municipality] including a municipality, but only with respect to
74 contracts that are financed in whole or in part by the state, shall set
75 aside in each fiscal year, for award to small contractors, on the basis of
76 competitive bidding procedures, contracts or portions of contracts for
77 the construction, reconstruction or rehabilitation of public buildings,
78 the construction and maintenance of highways and the purchase of
79 goods and services. Eligibility of nonprofit corporations under the
80 provisions of this section shall be limited to predevelopment contracts
81 awarded by the Commissioner of Housing for housing projects. The
82 total value of such contracts or portions thereof to be set aside by each
83 such agency shall be at least twenty-five per cent of the total value of

84 all contracts let by the head of such agency in each fiscal year,
85 provided that neither (1) A contract that may not be set aside due to a
86 conflict with a federal law or regulation; or (2) a contract for any goods
87 or services which have been determined by the Commissioner of
88 Administrative Services to be not customarily available from or
89 supplied by small contractors shall be included. Contracts or portions
90 thereof having a value of not less than twenty-five per cent of the total
91 value of all contracts or portions thereof to be set aside shall be
92 reserved for awards to minority business enterprises.

93 (c) The head of any state agency or political subdivision of the state,
94 [other than a municipality] including a municipality, but only with
95 respect to contracts that are financed in whole or in part by the state,
96 may, in lieu of setting aside any contract or portions thereof, require
97 any general or trade contractor or any other entity authorized by such
98 agency to award contracts, to set aside a portion of any contract for
99 subcontractors who are eligible for set-aside contracts under this
100 section. Nothing in this subsection shall be construed to diminish the
101 total value of contracts which are required to be set aside by any state
102 agency or political subdivision of the state [other than a municipality]
103 pursuant to this section.

104 (d) The heads of all state agencies and of each political subdivision
105 of the state [other than a municipality] shall notify the Commissioner
106 of Administrative Services of all contracts to be set aside pursuant to
107 subsection (b) or (c) of this section at the time that bid documents for
108 such contracts are made available to potential contractors.

109 (e) The awarding authority shall require that a contractor or
110 subcontractor awarded a contract or a portion of a contract under this
111 section perform not less than thirty per cent of the work with the
112 workforces of such contractor or subcontractor and shall require that
113 not less than fifty per cent of the work be performed by contractors or
114 subcontractors eligible for awards under this section. A contractor
115 awarded a contract or a portion of a contract under this section shall
116 not subcontract with any person with whom the contractor is affiliated.

117 No person who is affiliated with another person shall be eligible for
118 awards under this section if both affiliated persons considered together
119 would not qualify as a small contractor or a minority business
120 enterprise under subsection (a) of this section. The awarding authority
121 shall require that a contractor awarded a contract pursuant to this
122 section submit, in writing, an explanation of any subcontract to such
123 contract that is entered into with any person that is not eligible for the
124 award of a contract pursuant to this section, prior to the performance
125 of any work pursuant to such subcontract.

126 (f) The awarding authority may require that a contractor or
127 subcontractor awarded a contract or a portion of a contract under this
128 section furnish the following documentation: (1) A copy of the
129 certificate of incorporation, certificate of limited partnership,
130 partnership agreement or other organizational documents of the
131 contractor or subcontractor; (2) a copy of federal income tax returns
132 filed by the contractor or subcontractor for the previous year; and (3)
133 evidence of payment of fair market value for the purchase or lease by
134 the contractor or subcontractor of property or equipment from another
135 contractor who is not eligible for set-aside contracts under this section.

136 (g) The awarding authority or the Commissioner of Administrative
137 Services or the Commission on Human Rights and Opportunities may
138 conduct an audit of the financial, corporate and business records and
139 conduct an investigation of any small contractor or minority business
140 enterprise which applies for or is awarded a set-aside contract for the
141 purpose of determining eligibility for awards or compliance with the
142 requirements established under this section.

143 (h) The provisions of this section shall not apply (1) to any state
144 agency or political subdivision of the state [other than a municipality]
145 for which the total value of all contracts or portions of contracts of the
146 types enumerated in subsection (b) of this section is anticipated to be
147 equal to ten thousand dollars or less, or (2) municipal contracts or
148 portions of municipal contracts where the total cost of all work to be
149 performed by all contractors and subcontractors in connection with

150 new construction of public buildings or highways, or any remodeling,
151 refinishing, refurbishing, rehabilitation, alteration or repair of any
152 public building, or maintaining any highway is less than the amount
153 specified for such work in subsection (h) of section 31-53.

154 (i) In lieu of a performance, bid, labor and materials or other
155 required bond, a contractor or subcontractor awarded a contract under
156 this section may provide to the awarding authority, and the awarding
157 authority shall accept a letter of credit. Any such letter of credit shall
158 be in an amount equal to ten per cent of the contract for any contract
159 that is less than one hundred thousand dollars and in an amount equal
160 to twenty-five per cent of the contract for any contract that exceeds one
161 hundred thousand dollars.

162 (j) (1) Whenever the awarding authority has reason to believe that
163 any contractor or subcontractor awarded a set-aside contract has
164 wilfully violated any provision of this section, the awarding authority
165 shall send a notice to such contractor or subcontractor by certified
166 mail, return receipt requested. Such notice shall include: (A) A
167 reference to the provision alleged to be violated; (B) a short and plain
168 statement of the matter asserted; (C) the maximum civil penalty that
169 may be imposed for such violation; and (D) the time and place for the
170 hearing. Such hearing shall be fixed for a date not earlier than fourteen
171 days after the notice is mailed. The awarding authority shall send a
172 copy of such notice to the Commission on Human Rights and
173 Opportunities.

174 (2) The awarding authority shall hold a hearing on the violation
175 asserted unless such contractor or subcontractor fails to appear. The
176 hearing shall be held in accordance with the provisions of chapter 54.
177 If, after the hearing, the awarding authority finds that the contractor or
178 subcontractor has wilfully violated any provision of this section, the
179 awarding authority shall suspend all set-aside contract payments to
180 the contractor or subcontractor and may, in its discretion, order that a
181 civil penalty not exceeding ten thousand dollars per violation be
182 imposed on the contractor or subcontractor. If such contractor or

183 subcontractor fails to appear for the hearing, the awarding authority
184 may, as the facts require, order that a civil penalty not exceeding ten
185 thousand dollars per violation be imposed on the contractor or
186 subcontractor. The awarding authority shall send a copy of any order
187 issued pursuant to this subsection by certified mail, return receipt
188 requested, to the contractor or subcontractor named in such order. The
189 awarding authority may cause proceedings to be instituted by the
190 Attorney General for the enforcement of any order imposing a civil
191 penalty issued under this subsection.

192 (k) (1) On or before January 1, 2000, the Commissioner of
193 Administrative Services shall establish a process for certification of
194 small contractors and minority business enterprises as eligible for set-
195 aside contracts. Each certification shall be valid for a period not to
196 exceed two years. Any paper application for certification shall be no
197 longer than six pages. The Department of Administrative Services shall
198 maintain on its web site an updated directory of small contractors and
199 minority business enterprises certified under this section.

200 (2) The Commissioner of Administrative Services may deny an
201 application for the initial issuance or renewal of such certification after
202 issuing a written decision to the applicant setting forth the basis for
203 such denial. The commissioner may revoke such certification for cause
204 after notice and an opportunity for a hearing in accordance with the
205 provisions of chapter 54. Any person aggrieved by the commissioner's
206 decision to deny the issuance or renewal of or to revoke such
207 certification may appeal such decision to the Superior Court, in
208 accordance with the provisions of section 4-183.

209 (3) Whenever the Commissioner of Administrative Services has
210 reason to believe that a small contractor or minority business
211 enterprise who has applied for or received certification under this
212 section has included a materially false statement in his or her
213 application, the commissioner may impose a penalty not exceeding ten
214 thousand dollars after notice and a hearing held in accordance with
215 chapter 54. Such notice shall include (A) a reference to the statement or

216 statements contained in the application alleged to be false, (B) the
217 maximum civil penalty that may be imposed for such
218 misrepresentation, and (C) the time and place of the hearing. Such
219 hearing shall be fixed for a date not later than fourteen days from the
220 date such notice is sent. The commissioner shall send a copy of such
221 notice to the Commission on Human Rights and Opportunities.

222 (4) The commissioner shall hold a hearing prior to such revocation
223 or denial or the imposition of a penalty, unless such contractor or
224 subcontractor fails to appear. If, after the hearing, the commissioner
225 finds that the contractor or subcontractor has wilfully included a
226 materially false statement in his or her application for certification
227 under this subsection, the commissioner shall revoke or deny the
228 certification and may order that a civil penalty not exceeding ten
229 thousand dollars be imposed on the contractor or subcontractor. If
230 such contractor or subcontractor fails to appear for the hearing, the
231 commissioner may, as the facts require, revoke or deny the certification
232 and order that a civil penalty not exceeding ten thousand dollars be
233 imposed on the contractor or subcontractor. The commissioner shall
234 send a copy of any order issued pursuant to this subsection to the
235 contractor or subcontractor named in such order. The commissioner
236 may cause proceedings to be instituted by the Attorney General for the
237 enforcement of any order imposing a civil penalty issued under this
238 subsection.

239 (l) On or before August 30, 2007, and annually thereafter, each state
240 agency and each political subdivision of the state [other than a
241 municipality] setting aside contracts or portions of contracts shall
242 prepare a report establishing small and minority business set-aside
243 program goals for the twelve-month period beginning July first in the
244 same year. Each such report shall be submitted to the Commissioner of
245 Administrative Services, the Commission on Human Rights and
246 Opportunities and the cochairpersons and ranking members of the
247 joint standing committees of the General Assembly having cognizance
248 of matters relating to planning and development and government
249 administration and elections.

250 (m) On or before November 1, 1995, and quarterly thereafter, each
251 state agency and each political subdivision of the state [other than a
252 municipality] setting aside contracts or portions of contracts shall
253 prepare a status report on the implementation and results of its small
254 business and minority business enterprise set-aside program goals
255 during the three-month period ending one month before the due date
256 for the report. Each report shall be submitted to the Commissioner of
257 Administrative Services and the Commission on Human Rights and
258 Opportunities. Any state agency or political subdivision of the state [,
259 other than a municipality,] that achieves less than fifty per cent of its
260 small contractor and minority business enterprise set-aside program
261 goals by the end of the second reporting period in any twelve-month
262 period beginning on July first shall provide a written explanation to
263 the Commissioner of Administrative Services and the Commission on
264 Human Rights and Opportunities detailing how the agency or political
265 subdivision will achieve its goals in the final reporting period. The
266 Commission on Human Rights and Opportunities shall: (1) Monitor
267 the achievement of the annual goals established by each state agency
268 and political subdivision of the state; [other than a municipality;] and
269 (2) prepare a quarterly report concerning such goal achievement. The
270 report shall be submitted to each state agency that submitted a report,
271 the Commissioner of Economic and Community Development, the
272 Commissioner of Administrative Services and the cochairpersons and
273 ranking members of the joint standing committees of the General
274 Assembly having cognizance of matters relating to planning and
275 development and government administration and elections. Failure by
276 any state agency or political subdivision of the state other than a
277 municipality to submit any reports required by this section shall be a
278 violation of section 46a-77.

279 (n) Nothing in this section shall be construed to apply to the
280 janitorial or service contracts awarded pursuant to subsections (b) to
281 (d), inclusive, of section 4a-82.

282 (o) The Commissioner of Administrative Services may adopt
283 regulations in accordance with the provisions of chapter 54 to

284 implement the provisions of this section.

285 (p) The Metropolitan District of Hartford County shall be deemed a
286 municipality for the purposes of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	4a-60g